



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Walts Development Corporation d/b/a
Dalton Mountain GMC Truck
475 Main Street
Lancaster, NH 03584

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-028**

April 25, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division (the Division) to Walts Development Corporation, d/b/a Dalton Mountain GMC Truck, pursuant to RSA 147-A and Env-C 612. The Division is proposing that fines totaling \$11,350 be imposed against Walts Development Corporation, d/b/a Dalton Mountain GMC Truck for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Walts Development Corporation d/b/a Dalton mountain GMC Truck (Walts) is a corporation registered with the NH Secretary of State, having a mailing address of 475 Main Street, Lancaster, NH 03584.

III. Summary of Facts and Law Supporting Claims

1. RSA 147-A authorizes the Department of Environmental Services (DES) to regulate the management, transportation, and disposal of hazardous waste in New Hampshire. RSA 147-A:3 authorizes the Commissioner of DES to adopt rules to implement hazardous waste management standards. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-Wm 100-1000 (Hazardous Waste Rules).
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose administrative fines of up to \$2,000 per violation for violations of RSA 147-A and rules adopted pursuant thereto. The Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. Walts conducts a business operation at property more particularly described in a deed

recorded in the Coos County Registry of Deeds at Book 766, Page 290, and identified on the Lancaster Tax Map as Map R2, Lot 51 (the Site). The Site is currently owned by Dean Walts.

4. Walts was first issued a New Hampshire hazardous waste transporter registration (Registration) on May 5, 1998, as Dalton Mountain Motors. Walts is an automobile dealership which picks up used oil from local businesses to burn in its waste oil burner.
5. Walts receives copies of the Hazardous Waste Rules regarding hazardous waste transportation and used oil management annually, when Walts receives its renewal reminder and when Walts receives its Registration from DES. Copies are also sent when any changes to the rules are made.
6. On January 5, 2001, Division personnel conducted an inspection (Inspection) of Walts. The purpose of the inspection was to determine Walts compliance status relative to RSA 147-A and the Hazardous Waste Rules.
7. At the time of the Inspection, Division personnel spoke with Dean Walts, President of Walts. Mr. Walts informed Division personnel that no particular truck was used when transporting used oil.
8. Env-Wm 603.06(a)(1) requires the transporter to display the name of the company on both sides of all power or waste carrying units used to transport hazardous waste.
9. During the Inspection, Mr. Walts informed Division personnel that the truck(s) used to transport used oil did not display the company name on both sides of the vehicle.
10. Env-Wm 603.06(a)(2) requires the transporter to display the city and state where the business office is located on both sides of all power or waste carrying units used to transport hazardous waste.
11. During the Inspection, Mr. Walts informed Division personnel that the truck(s) used to transport used oil did not display the company s city and state where the business office is located on both sides of the vehicle.
12. Env-Wm 603.06(a)(3) requires the transporter to display the transporter registration number on both sides of all power or waste carrying units used to transport hazardous waste.
13. During the Inspection, Mr. Walts informed Division personnel that the truck(s) used to transport used oil did not display the company s TNH number on both sides of the vehicle.
14. Env-Wm 603.09 requires the transporter to maintain a training program for employees involved in transportation.
15. During the Inspection, Mr. Walts informed Division personnel that Walts did not have a training program in place for employees involved in the transportation of hazardous waste.
16. Env-Wm 603.10 requires transporters to maintain a written contingency plan which outlines procedures to be followed in the event of an emergency while transporting hazardous waste.
17. During the Inspection, Mr. Walts informed Division personnel that he did not have a

contingency plan.

18. Env-Wm 609.06(b) requires that a copy of the hazardous waste transporter registration confirmation letter is carried in the vehicle used to transport hazardous waste.

19. During the Inspection, Mr. Walts informed Division personnel that the hazardous waste transporter registration confirmation letter was not carried in the vehicle used to transport hazardous waste.

20. Env-Wm 609.06(d) requires transporters to carry a copy of the contingency plan in the vehicle used to transport hazardous waste.

21. During the Inspection, Mr. Walts informed Division personnel that Walts did not have a contingency plan.

22. Env-Wm 609.06(e) requires transporters to carry spill control equipment in the vehicle used to transport hazardous waste.

23. During the Inspection, Mr. Walts informed Division personnel that spill control equipment was not carried in the vehicle used to transport hazardous waste.

24. Env-Wm 807.07(b) requires transporters to include the complete address of the generator, the EPA Identification number of the transporter, and the quantities of used oil transported on the bill of lading in accordance with Env-Wm 807.06(b)(13).

25. A review of fifty bills of lading for the year 2000 revealed the following:

- a. Ten bills of lading did not contain the complete site address of the generator.
- b. Fifty bills of lading did not contain the EPA identification number of the transporter.
- c. Two bills of lading did not contain the quantity of used oil being transported.

26. Env-Wm 807.07(c) requires transporters to maintain copies of bills of lading for three years.

27. During the Inspection Mr. Walts informed Division personnel that the bills of lading from previous years were not kept.

28. The Division issued Letter of Deficiency No. WMD 98-07 (LOD) dated March 5, 1998, to Walts for transporting used oil without a New Hampshire hazardous waste transporter registration. Walts was also cited for several violations of the used oil regulations. In the LOD, Walts was instructed to:

- a. Immediately cease transporting used oil until a New Hampshire hazardous waste transporter registration was obtained.

- b. Ensure compliance with the general requirements for transporter and vehicle identification prior to transporting used oil or any other hazardous waste.
- c. Ensure that a properly completed bill of lading is used when transporting used oil.

IV. Violations Alleged

1. Walts has violated Env-Wm 603.06(a)(1) by failing to display the name of the company on both sides of all power or waste carrying units used to transport hazardous waste.
2. Walts has violated Env-Wm 603.06(a)(2) by failing to display the city and state where the business office is located on both sides of all power or waste carrying units used to transport hazardous waste
3. Walts has violated Env-Wm 603.06(a)(3) by failing to display the transporter registration number on both sides of all power or waste carrying units used to transport hazardous waste.
4. Walts has violated Env-Wm 603.09 by failing to maintain a training program and provide training to employees involved in the transportation of hazardous waste.
5. Walts has violated Env-Wm 603.10 by failing to maintain a written contingency plan.
6. Walts has violated Env-Wm 609.06(b) by failing to ensure a copy of the hazardous waste transporter registration confirmation letter is carried in the vehicle used to transport hazardous waste.
7. Walts has violated Env-Wm 609.06(d) by failing to carry a copy of the contingency plan in the vehicle used to transport hazardous waste.
8. Walts has violated Env-Wm 609.06(e) by failing to carry spill control equipment in the vehicle used to transport hazardous waste.
9. Walts has violated Env-Wm 807.07(b) by failing to include the complete address of the generator, the EPA Identification number of the transporter, and the quantities of used oil transported on the bill of lading in accordance with Env-Wm 807.06(b)(13).
10. Walts has violated Env-Wm 807.07(c) by failing to maintain copies of bills of lading for three years.

V. Proposed Administrative Fines

1. For the violation identified in IV.1, above, Env-C 612.02(g) specifies a fine of \$1,000.
2. For the violation identified in IV.2, above, Env-C 612.02(h) specifies a fine of \$250.
3. For the violation identified in IV.3, above, Env-C 612.02(i) specifies a fine of \$1,000.

4. For the violation identified in IV.4, above, Env-C 612.02(a) specifies a fine of \$2,000.
5. For the violation identified in IV.5, above, a fine in the amount of \$1,500 has been calculated pursuant to Env-C 610.
6. For the violation identified in IV.6, above, Env-C 612.02(k) specifies a fine of \$500.
7. For the violation identified in IV.7, above, a fine in the amount of \$1,500 has been calculated pursuant to Env-C 610.
8. For the violation identified in IV.8, above, a fine in the amount of \$1,500 has been calculated pursuant to Env-C 610.
9. For the violation identified in IV.9, above, a fine in the amount of \$925 has been calculated pursuant to Env-C 610.
10. For the violation identified in IV.10, above, a fine in the amount of \$1,175 has been calculated pursuant to Env-C 610.

The total fine being sought is \$11,350.

VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, June 25, 2001 at 9:00 a.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than May 25, 2001**, using the enclosed colored form as follows:

1. If Walts plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.
2. If Walts chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If Walts wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Walts' interest in settling.

Walts is not required to be represented by an attorney. If Walts chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Walts wishes to have a hearing but is unable to attend as scheduled, Walts must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled.

If Walts fails to notify Mr. Ballentine in advance and does not have a representative attend the hearing, the hearing will be conducted in Walts' absence in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Walts committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Walts committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Walts proves, by a preponderance of the evidence**, applies in this case:
 1. The violation was a one-time or non-continuing violation, **and** Walts did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Walts did not benefit financially, whether directly or indirectly, from the violation.
 2. At the time the violation was committed, Walts was making a good faith effort to comply with the requirement that was violated.
 3. Walts has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
 4. Other information exists which is favorable to Walts' case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******


The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that **Walts** committed the violation(s) alleged above and that the fine(s) should be imposed.

The hearing is Walts' opportunity to present testimony and evidence that Walts did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If Walts has any evidence, such as

photographs, business records or other documents, that believes show that **Walts** did not commit the violation(s) or that otherwise support 's position, **Walts** should bring the evidence to the hearing. **Walts** may also bring witnesses (other people) to the hearing to testify on **Walts'** behalf.

If Walts wishes to have an informal meeting to discuss the issues, Walts must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Walts has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


COPY
Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2000*)

cc: DB/File
Gretchen Rule
Susan Alexant
Ken Marschner
Tammy Calligandes
PIC
Town of Lancaster

***** RETURN THIS PAGE ONLY *****

APPEARANCE

____ On behalf of Walts I will attend the hearing scheduled for **Monday, June 25, 2001 at 9:00.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

WAIVER OF HEARING

____ I certify that on behalf of Walts I understand my right to a hearing regarding the imposition of the proposed administrative fine and that as an authorized representative of Walts, I hereby waive those rights. The fine payment in the amount of \$11,350 paid to Treasurer, State of New Hampshire is enclosed.*

** If any portion of the payment is made by a check, draft, or money order which is returned or dishonored due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Signature

Date

Name (please print or type): _____

Title: _____

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095